



Gp 3732  
#9/85  
7/31/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of: )  
Matthew M. Morrison et al. ) Before the Examiner  
Serial No. 09/941,056 ) Eduardo C. Robert  
Filed August 28, 1999 ) Group Art Unit 3732  
MULTI-AXIAL BONE ANCHOR )  
SYSTEM )

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on 24 July 2003.

CHRISTOPHER A. BROWN  
Name of Registered Representative  
*Christopher A. Brown*  
Signature

24 July 2003  
Date of Signature

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**RECEIVED**

JUL 30 2003

TECHNOLOGY CENTER 1430

In response to the Restriction Requirement dated June 24, 2003, Applicants make the following elections. No fees are believed to be due for consideration of this paper, but if any fees are deemed due, or if any extensions of time are deemed to be necessary, please provide such extensions and charge any such fees to Deposit Account No. 23-3030, but not to include issue fees.

**REMARKS**

Claims 35-68 are pending in the above-identified application. The Examiner has required restriction to one of the following groups of claims under 35 U.S.C. § 121:

- I. Claims 35-51, drawn to an orthopedic implant, classified in class 606, subclass 71.
- II. Claims 52-54, drawn to a method, classified in class 606, subclass 60.
- III. Claims 55-58, drawn to an apparatus, classified in class 606, subclass 61.

IV. Claims 59-62, drawn to an apparatus, classified in class 411, subclass 531.

V. Claims 63-68, drawn to an apparatus, classified in class 606, subclass 86.

Applicants traverse the restriction requirement on the grounds that searching and examining the entire application can be made without serious burden. This application is a continuation of U.S. Patent No. 6,280,445. On the face of that patent, it is shown that the field of search includes Class 606, subclasses 60, 61 and 71, among others. Thus, those classes would be within the field of search for at least claims 35-58, and a search of those classes would be expected and would not cause any extra burden in this case. On this basis, per MPEP 803, at the very least claim groups I, II and III (claims 35-58) should be examined together.

Further, it is respectfully suggested that the noted classification of claim groups IV and V appear incorrect. As to claim group IV, each claim includes a "washer for use with an orthopedic fixation device." The recitation of the orthopedic use places these claims in class 606, likely subclass 60. Similarly, each claim in claim group V includes a "stabilizer for use with an orthopedic fixation device," and these claims should also be classified in class 606, subclass 60. Even if it is proper to categorize these claim groups in class 606, subclass 86, it is still reasonably within the same field of search as the rest of the claims. Adding class 606, subclass 86 to a search that will comprise subclasses 60, 61 and 71 and others of class 606 will not place an additional serious burden on the examiner. Based at least on MPEP 803 and 808.02, it is respectfully submitted that the restriction requirement should be withdrawn, because the search field for one group of claims will include most or all classes to be searched for the other claim groups.

Since an election of a single group is required in order to be fully responsive, Applicants hereby elect the claims of group I (claims 35-51) with traverse.

A requirement for election as to species further specifically called for selection of a single item from each of five categories for examination. This requirement is traversed because the legal basis for this requirement, made in this particular way, is not clear. 37 CFR 1.146 provides that if more than a "reasonable number" of species have been offered in an application, the examiner may request limitation to a "reasonable number." There has been no determination that there are more than a "reasonable number" of species in this application, and it is believed that only a reasonable number are disclosed. Further, the requirement requests an election of "a single disclosed species" rather than a "reasonable number," as the rules state.

The requirement is also traversed because at least claim 35 is generic to all alleged species present in the application. Claim 35 is directed to an orthopedic implant having a base member, a stabilizer, a fixation member, a washer and a nut. Except for the bone screw shown in FIG. 12, each of the items in each of the examiner's categories meets the language of claim 35. In other words, claim 35 reads on almost all of the views of each of the five identified items and potentially others. It comprehends the organization of each species, and has no material element additional to those in species claims. It thus meets the general characterization of a generic claim given in MPEP 806.04(d).

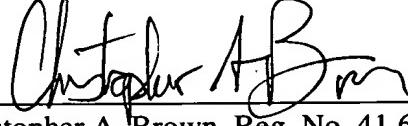
Accordingly, it is respectfully requested that the requirement for species election be withdrawn. Nevertheless, since a species election is required in order to be fully responsive, Applicants hereby elect, with traverse, the following: I(P), I(W), I(N), I(S), I(B). Claims 35-39 are readable on that subject matter.

The claims in this application are intended by Applicants to be supported by and apply to all embodiments disclosed in the specification and drawings, and if issued are to be interpreted as

the law allows to cover other structures within their respective scopes. No limitation of the scope of any claim is intended by any election made in this paper.

In conclusion, the Applicants have traversed the restriction requirement as indicated above while making an election as the rules require, and respectfully request the withdrawal of the requirements and consideration of all claims. An action toward a Notice of Allowance in this case is hereby respectfully requested.

Respectfully submitted,



---

Christopher A. Brown, Reg. No. 41,642  
Woodard, Emhardt, Moriarty,  
McNett & Henry LLP  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, IN 46204-5137